

MISSISSIPPI DIVISION OF MEDICAID

Eligibility Policy and Procedures Manual

304.01.05M EXCEPTIONS TO TRANSFERS

Home Property

The transfer penalty will not apply to the transfer of home property by an institutionalized individual to the following family members of such individual:

- The individual's spouse or child under age 21 or a disabled or blind adult child (Disability must be established and age verified); **or**
- A sibling who is part owner of the home who lived in the home for one (1) year prior to the individual entering a nursing facility; **or**
- A child who lived in the home for two (2) years before the individual entered a nursing facility and provided care to the individual which permitted the individual to remain at home.

Sufficient documentary information must be provided to make a determination that (1) the child resided in the home for the required length of time. This may include statements from knowledgeable individuals when other verification is not available. (2) Whether the child provided care which enabled the parent to remain at home. If the child was employed outside the home, the arrangements for care while the child was away must be determined.

Non-Home Property

The transfer penalty will not apply to the transfer of any type of non-home asset in the following situations:

- Assets transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;
- Assets transferred from the individual's spouse to another for the sole benefit of the individual's spouse;
- Assets transferred to the individual's child under age 21 or a disabled or blind adult child. If the disabled adult child is not receiving a social security disability payment, a disability determination is required;
- Assets transferred to a Special Needs Trust established solely for the benefit of a disabled applicant less than 65 years of age.

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EXCEPTIONS TO TRANSFERS (Continued)

In determining whether an asset was transferred for the sole benefit of a spouse, child, or disabled individual, ensure that the transfer was accomplished via a written instrument of transfer (e.g., a trust document) which legally binds the parties to a specified course of action and which clearly sets out the conditions under which the transfer was made, as well as who can benefit from the transfer.

A transfer without such a document cannot be said to have been made for the sole benefit of the spouse, child, or disabled individual, since there is no way to establish, without a document, that only the specified individuals will benefit from the transfer. An individual shall not be ineligible for medical assistance if an acceptable rebuttal is submitted and a satisfactory showing is made to the Division of Medicaid that:

- The individual intended to dispose of the assets either at fair market value or for other valuable consideration;
- The assets were transferred exclusively for a purpose other than to qualify for medical assistance;
- All assets transferred for less than fair market value have been returned to the individual; or
- The Division of Medicaid determines that denial of eligibility would work an undue hardship on the individual.

Undue Hardship

Undue hardship exists when:

- Application of the transfer penalty would deprive the individual of medical care such that his/her health or his/her life would be endangered.
- Application of the transfer penalty would deprive the individual of food, clothing shelter, or other necessities of life and cause severe deprivation.
- The applicant or spouse or representative has exhausted all legal action to have the transferred assets that caused the penalty returned.

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Undue Hardship Provision (Continued)

Undue hardship does not exist when:

- Application of the application of the transfer of assets provision merely causes the individual inconvenience or when such application might restrict his or her lifestyle but would not put him or her at risk of serious deprivation.
- The assets were transferred to community spouse and the community spouse refuses to cooperate in making the resource available to the institutional spouse.
- The resource was transferred to a person (spouse, child, or other person) who was handling the financial affairs of the client or to the spouse or children of a person handling the financial affairs of the client unless it is established that the transferred funds cannot be recovered even through exhaustive legal measures.

Each case situation must be reviewed individually to determine if undue hardship exists. Generally, this provision is limited to financially and medically needy individuals with no possible means of recovering the transferred assets..

Undue Hardship Waiver Requested by Facility

Effective February 8, 2006, an undue hardship waiver may be requested by the facility in which the person resides on behalf of the individual if the facility has the individual's consent, or their person representative's consent. The hardship waiver is for the recipient, not the hardship of the facility. The agency provides that, while an application for an undue hardship waiver is pending in the case of an individual, who is a resident of a nursing facility, payments to the nursing facility to hold the bed for the individual will be made for a period not to exceed 30 days.

Exception for Transfers to Community Spouse or Third Party

Section 1924 of the Act sets forth the requirements for treatment of income and resources where there is an individual in a medical institution with a spouse still living in the community. This section of the Act provides for apportioning income and resources between the institutional spouse and the community spouse so that the community spouse does not become impoverished because the individual is in a medical institution.

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Exception for Transfers to Community Spouse or Third Party (Continued)

The exceptions to the transfer of assets penalties regarding inter-spousal transfers and transfers to a third party for the sole benefit of a spouse apply even under the spousal impoverishment provisions. Thus, the institutional spouse can transfer unlimited assets to the community spouse or to a third party for the sole benefit of the community spouse.

When transfers between spouses are involved, the unlimited transfer exception should have little effect on the eligibility determination, primarily because resources belonging to both spouses are combined in determining eligibility for the institutionalized spouse. Thus, resources transferred to a community spouse are still considered available to the institutionalized spouse for eligibility purposes.

The exception for transfers to a third party for the sole benefit of the spouse may have greater impact on eligibility because resources may potentially be placed beyond the reach of either spouse and thus cannot be counted for eligibility purposes. However, for the exception to be applicable, the definition of what is for the sole benefit of the spouse must be fully met.

This definition is fairly restrictive, in that it requires that any transferred funds be spent for the benefit of the spouse within a time-frame actuarially commensurate with the spouse's life expectancy. If this requirement is not met, this exemption is void, and a transfer to a third party may then be subject to a transfer penalty.